
(2001) 04 GAU CK 0008
In the Gauhati High Court
Case No : Writ Petition (C) No. 1067 of 1999

Mridulakakati Hazarika

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 19-04-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 2 GLT 6

Hon'ble Judges : N. Surjamani Singh, J

Bench : Single Bench

Advocate : G.P. Bhowmik, A. Verma and R. Hazarika, for the Appellant; B.J. Talukdar and H.K. Baishya, for the Respondent

Final Decision : Allowed

Judgement

N.S. Singh, J.—Heard Mr. Bhowmick, learned Counsel for the Petitioner and Mr. B.J. Talukdar, learned Govt. Advocate for the official Respondents and Mr. H.K. Baishya, learned Counsel for Respondent No. 4.

As the learned Counsel appearing for the parties agreed for causing disposal of this writ petition at this stage, I hereby propose to dispose of this writ petition at this stage considering the nature of the case and accordingly I dispose of the same with the following order.

2. In this writ petition the Petitioner who is the Headmistress of Kamalabari Girls' High School and also the Secretary of the development committee of the said school (now dissolved) questioned the validity of the impugned orders dated 11.9.98, 16.10.98 and 18.11.98 pertaining to the transfer and posting of the private Respondent Smt. Pabitri Baruah and withdrawal of the post of LDA from Kamalabari Girls' High School, Majuli as in Annexure-B, C and D to the writ petition by contending inter alia, that there has been resentment of the public in general of the order concerned after the action of the official Respondents regarding the transfer of the private Respondent Mrs. Barua with the post of LDA

from the said school and, the said withdrawal of the post from the said school was made with oblique motive and for personal benefit of the private Respondent and not in public interest for which the Petitioner has approached the authority concerned including the Director of Secondary Education, Assam, Kahilipara for recalling the said withdrawal of the post of LDA from the said school and the transfer of the private Respondent with the said post as seen in the related resolution/representation dated 30.11.98 and 20.2.99 as in Annexure E-I to the writ petition.

3. The case of the Petitioner is that the action of the official Respondents causing the transfer of the private Respondent Smt. Barua with the post is not tenable in the eye of law, rather it is arbitrary and against the interest of the school thus affecting the affairs of the school.

4. The case of the Petitioner is resisted by the Respondents by filing counter affidavit. The learned Govt. Advocate Mr. Talukdar submitted that the said school does not require the services of two LDA/Office Asstt. because of enrollment of few students in the said school and apart from that the said school has less than 70 numbers of students and withdrawal of one post of LDA from that school will not affect the working of the school and, withdrawal of one post of LDA will not cause any loss to the school and the school where the private Respondent was transferred requires the services of one more LDA/Office Asstt. and accordingly, the private Respondent has been posted there, that is Gitarthi Vidyalaya, Jorhat. It is also the case of the official Respondents that the Respondent No. 4 Mrs. Baruah has applied for her transfer several times after her getting married as her husband was also serving at Jorhat and her case was examined by the Controlling Officer and, considering all this existing facts and circumstances, the private Respondent has been transferred from Kamalabari Girls' High School to Gitarthi Vidyalaya, Jorhat with the post.

5. The submissions so far advanced by the learned Govt. Advocate is also endorsed by Sri H.K. Baishya, learned Counsel appearing for Respondent No. 4 who also contended that the private Respondent has been serving in the said school since 1987 and was married in the month of May, 1993 and she applied for her transfer at Jorhat as her husband is serving in Ward No. 4 L.P. School at Jorhat and as such private Respondent required to stay with her husband at Jorhat.

According to H.K. Baishya, learned Counsel for the private Respondent, the Inspector of Schools, District Circle, Jorhat made a proper enquiry in the matter and the Inspector of Schools found that only one office assistant's service is required in Kamalabari Girls' High School, Majuli and not the service of two Office Assistants/LDA and as such the request of the private Respondent is genuine and she may be transferred along with her post and as per the said enquiry report, the appropriate authority issued the impugned office order transferring the private Respondent with the post to her present place of posting as discussed above.

6. Generally and ordinarily this Court while exercising its power and jurisdiction under Article 226 of the Constitution of India do not interfere with the order of transfer and posting of the Govt. employees. But in the instant case, the transfer of the private Respondent with the post from Kamalabari Girls' High School to Anr. High School in Jorhat Sub-Division under the impugned order dated 11.9.98 as in Annexure-B issued by the authority concerned, namely, Deputy Secretary, Govt. of Assam, Education Department virtually amounts to arbitrary action of the official Respondents and apart from it, the same was done with oblique motive for personal benefit of the private Respondent No. 4. Rather the action and decision of the authority concerned under the impugned orders dated 11.9.98, 16.10.98 and 18.11.98 as in Annexure-B, C and D to the writ petition are not based on reasonable grounds for the following reasons:

(1) The school namely, Kamalabari Girls' High School, Majuli was provincialised with staff strength including the post of LDA/Office Asstt. which has been withdrawn by the official Respondents under the impugned orders for causing the transfer of Respondent No. 4 without any justification.

(2) It is not disputed that the private Respondent No. 4 sought for her transfer at Jorhat on the ground stated above after her marriage.

(3) In the instant case, her transfer to Jorhat is not objected by the writ Petitioner but her transfer with the post of LDA which is meant and created for Kamalabari Girls' High School to any other school has been questioned by the writ Petitioner in the capacity of a Headmistress and Secretary of the dissolved committee.

7. In my considered view, the Petitioner has locus standi to present this writ petition as the transfer of the private Respondent with the post affects the working condition of the said school. If the withdrawal of the post under the related order of the official Respondent had been based on sound and common sense, it would have been otherwise, but, in the instant case, the reasons assigned by the official Respondents, and the decision taken on it, according to me, is based on non-common sense which is not permissible under the law. At this stage, I hereby recall the words of JR Lucas, the jurist to adorne Lord Denning who brought common sense to the interpretation of law. The related words and version of JR Lucas of Merton College, Oxford finds its place in a book called "Lord Denning a biography" and the said words of Mr. JR Lucas are quoted below:

In an article in the Times on 17th September 1980 J.R. Lucas of Merton College, Oxford said-

Although some think that the law should always be clear, in practice it is not, and we have recourse to judges for authoritative interpretations. The only question is whether in interpreting what is nuclear the law should be guided by common sense and give weight to considerations of expediency, justice and morality. Lord Denning thinks it should. Others think not.

Mr. Lucas argued that a non-common sense decision is no more certain than one based on common sense. For the layman the law should be more predictable if based on common sense. Since laws apply to laymen there is a good arguments for the development of the law to be influenced by common sense as well as legal reasoning. In a doubtful case there is a Strong case for the use of common sense as it makes the law easier to predict and worthier of respect. A preceptive paragraph appeared to the Sunday Mirror on 16 October 1966 : It is not that Lord Denning is excessively liberal. It is merely that he always seems to decide a case the way you or I would....But an odd man out who has the gift of bending it (the law) in the right direction, is something for which we can be truly grateful.

8. In a matter of public policy, the same must be for public good and welfare and in public interest as the same cannot be camouflage for abuse or misuse of power for which the court has jurisdiction and the power to ascertain whether the policy of the Govt. was a means to filter away the public property and service for personal gains.

9. In the instant case, the post of LDA which has been withdrawn by the official Respondents under the impugned orders as discussed above is/was meant and created for Kamalabari Girls" High School. In my considered view, the same has been withdrawn for the personal gain and interest of the private Respondent No. 4, thus ignoring the interest of the students community as well as the school namely, Kamalabari Girls" High School which was provincialised by the competent authority taking into account the existence of the said post of LDA held by private Respondent Mrs. Barua.

10. I am also of the view that the reasons and grounds so far assigned by the official Respondent for the purpose of withdrawal of the said post of LDA while transferring the private Respondent Mrs. Barua and/is not proper and without legal reasonings. Hence, there is infirmity in the related decision making process of the authority concerned while passing impugned orders dated 11.9.98, 16.10.98 and 18.11.98 as in Annexure-B, C and D to the writ petition.

11. This Court need not go more into depth further as suffice is made with the above observation for setting aside the impugned orders pertaining to the transfer of the private Respondent with the said post of LDA which is meant for Kamalabari Girls" High School.

For the reasons, observations and discussions made above, I am also of the view that the Petitioner could make out a case to justify the interference with the impugned orders of transfer of the private Respondent with the post of LDA from Kamalabari Girls" High School to Anr. school as seen in the impugned orders, particularly the withdrawal of the post of LDA from the said Kamalabari Girls" High School and accordingly, the impugned orders dated 11.9.98, 16.10.98 and 18.11.98 are hereby quashed. However, it is made clear that this judgment and order shall not stand on the way of the official Respondents to allow the private Respondents Mrs. Barua to serve as LDA in any school under the official

Respondents, but it is made clear that the official Respondents or the competent authority shall recall the order for withdrawal of the post LDA/Office Asstt. From Kamalabari Girls" High School by issuing necessary orders within a period of one week from the date of receipt of this order and it is made clear that this post of LDA which is made available for the Kamalabari Girls" High School again under the order of this Court shall be filled up regularly as early as possible in terms of related services rules so that the said school may not suffer for want of service of LDA/Office Assistant.

In the result, the petition is allowed. No order as to cost.